

February 25, 2005

TIM EYMAN
11913 59th AVE WEST
MUKILTEO, WA 98275

Subject: Complaint to PDC Alleging Violations of RCW 42.17.130 By Officials of
Sound Transit - PDC Case No. 04-457

Dear Mr. Eyman:

The Public Disclosure Commission (PDC) staff has completed its investigation of your complaint alleging that officials of Sound Transit violated RCW 42.17.130 by increasing its advertising budget significantly during 2002 from 2001, which you alleged appeared to be timed to oppose Initiative 776, a statewide ballot measure in 2002. Your complaint was received August 29, 2002, but investigation of your complaint was suspended pending the outcome of a Permanent Injunction that had been issued in King County concerning the Commission's application of RCW 42.17.130. The investigation was restarted April 28, 2004 following the State Supreme Court's reversal of the Permanent Injunction.

PDC staff reviewed your complaint in light of the following statute and administrative rule:

RCW 42.17.130 states in part:

“No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for...the promotion of or opposition to any ballot proposition.”

“[T]he foregoing provisions of this section shall not apply to the following activities:

...Activities which are part of the normal and regular conduct of the office or agency.”

WAC 390-05-273 states in part:

“Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17.130, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner.”

You alleged that Sound Transit budgeted \$581,250 in 2001 for media, of which it spent less than half, and that in 2002 the agency budgeted \$1.1 million dollars, \$800,000 of which was for what you describe as “*image ads*.” In your complaint, you stated that you did not dispute expenses for marketing and advertising of existing services; however, you did question the expenditures of taxpayer dollars from the date of your complaint [August 29, 2002] until the November election by Sound Transit for “*image ads*” which you said you believed was an inappropriate effort to “fight the passage of Initiative 776.”

We found:

- On November 5, 1996, voters approved Sound Transit’s Ten-Year Regional Transit System Plan, entitled Sound Move, to implement the high capacity transportation system contemplated by Chapters 81.104 and 81.112 RCW.
- In 1998, Sound Transit authorized a contract with COPACINO/Pacific Rim Resources for Marketing and Advertising services to build awareness of the agency and its services and, as new services are launched, to promote the new services and help build ridership.
- The annual budget process for Sound Transit begins in the prior year in June with department heads preparing the staff budgets, and the executive management team reviewing and finalizing those budgets in July. In August, the departments submit their budgets to the finance committee for review and possible modification in September and October. The Board then takes final action to approve the budget in the months of November and December. The Sound Transit’s 2002 proposed annual budget, which included the media plan to spend \$800,000 to advertise the agency and \$350,000 to advertise Sound Transit’s three lines of business (Sounder, Central Link, and ST Express), was released in October of 2001, and adopted on December 13, 2001.
- Claire Jackson, attorney for Sound Transit, states that the agency’s 2002 media efforts represents “[a]ctivities which are part of the normal and regular conduct of the office or agency,” and are consistent with its media outreach programs. Internal documents indicate that Sound Transit spent \$500,075, \$314,643, \$1,049,534, and \$1,429,497, in calendar years 2000, 2001, 2002, and 2003, respectively, related to advertising agency programs and services. Ric Ilgenfritz, the Chief Communications Officer, and Tim Healy, Sound Transit’s marketing manager, stated that expenditures for 2004 and 2005 remained the same or were projected to increase consistent with an increase in services.

Calendar Year	Sound Transit's Media Expenditures
2000	\$ 500,075
2001	\$ 314,643
2002	\$1,049,534
2003	\$1,429,497
2004	\$1,400,000
2005	\$1,900,000

- Media budget expenditures for calendar years 2000 through 2003 were for newspaper ads, radio spots, billboards on buses, and TV advertising. The content of Sound Transit's 2002 advertising did not support or oppose candidates or ballot issues but informed the public of Sound Transit's existence and purpose, as well as its current and planned services, and made no overt reference to I-776 (e.g., "vote no"), nor did it encourage the public indirectly to vote against the initiative by discussing the need for transit funding.
- Further, advertising intended to create awareness of the overall activities of the agency ran from February 4, to July 14, 2002, and included a combination of radio (including public radio, diversity radio, and Radio Disney), newspaper, and TV sponsorship to reach the 18-54 demographic. Mr. Ilgenfritz stated that the Sound Transit Finance Committee directed him to not schedule this type of advertising, which Mr. Ilgenfritz refers to as 'branding ads,' through the remainder of the year due to the sensitivity of the upcoming election. Therefore, those advertisements ended in July 2002.
- In May 2001, Mr. Ilgenfritz became Sound Transit's new Chief Communications Officer. Mr. Ilgenfritz stated that the 2002 budget was his first budget as communications director and that it reflected his priorities as communications director to increase marketing and reach new customers due to new services, particularly within the regional express bus service. In addition, in January 2002, research conducted by the agency showed that a significant percentage of the public lacked knowledge about Sound Transit and its various services. Therefore, Sound Transit's Board and Citizen Oversight Panel directed the agency to *"improve communications with the general public."*

Given that multiple funding decisions leading to the 2002 media plan occurred prior to the filing of I-776, advertising intended to create awareness of the overall activities of the agency, sometimes referred to as "image ads," did not appear after July 15, 2002, and none of the advertisements placed by Sound Transit mentioned the ballot issue or funding for the agency, the evidence supports that the advertisements were part of the normal and regular conduct of the agency to distribute information to the general public about its programs and services.

Tim Eyman
PDC Case No. 04-457
Page 4

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against the officials of Sound Transit.

If you have questions, please feel free to contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828.

Sincerely,

Vicki Rippie
Executive Director

c: Claire Jackson, Sound Transit